

No. _____

3128

United States
Circuit Court of Appeals
For the Ninth Circuit.

JAMES A. MURRAY,

Appellant,

vs.

H. E. RAY, as Trustee of the Estate of Alec Mur-
ray, Bankrupt,

Appellee.

Transcript of the Record

*Upon Appeal from the United States District Court
for the District of Idaho, Eastern Division.*

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NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD.

JAMES E. MURRAY, ESQ.,
Butte, Montana,
Solicitor for Appellant.

J. M. STEVENS, ESQ.,
Pocatello, Idaho,
Solicitor for Appellee.

*In the District Court of the United States for the
District of Idaho, Eastern Division.*

H. E. RAY, as Trustee of the Estate of Alec Mur-
ray, Bankrupt, *Plaintiff,*

vs.

JAMES A. MURRAY, *Defendant.*

No. 205

PETITION.

To the Honorable, the Judge of the District Court
of the United States, for the District of Idaho,
Eastern Division:

Comes now your petitioner, H. E. Ray, as Trustee
of the Estate of Alec Murray, Bankrupt, and files
this, his petition, against the above named defen-
dant, James A. Murray, whose citizenship and resi-
dence are hereinafter particularly described, and
thereupon complains and says:

I.

That your petitioner, H. E. Ray, is a citizen of
the State of Idaho, and a resident of the City of Po-
catello, County of Bannock and State of Idaho, and
that the property hereinafter described is situate in
said County and State.

II.

That the defendant, James A. Murray, is a citi-
zen of the State of Montana, and a resident of the
City of Butte, County of Silver Bow, and State of
Montana.

III.

That this suit is of a civil nature in equity and is between citizens of different states, and arises under the laws of the United States, and the amount in controversy herein exceeds the sum or value of Three Thousand Dollars, exclusive of interest and costs.

IV.

That one Alec Murray was duly adjudicated a bankrupt in an involuntary bankruptcy proceeding entitled "In the Matter of Alec Murray, Bankrupt," in the District Court of the United States, for the District of Idaho, Eastern Division, on the 15th day of July, 1917; that the schedule of assets and liabilities filed in said proceedings by said Alec Murray, Bankrupt, are as follows, to-wit: (Exhibit 'A' hereto attached and made a part hereof, with the same effect as though set forth in haec verba.)

V.

That your petitioner, H. E. Ray, was duly elected trustee by the creditors of said Alec Murray, Bankrupt, in a certain bankruptcy proceeding on the 31st day of July, 1917, entitled: "In the Matter of Alec Murray, Bankrupt," in the District Court of the United States for the District of Idaho, Eastern Division.

VI.

That your petitioner, H. E. Ray, thereafter duly qualified as such Trustee and is now the duly elected, appointed, qualified and acting Trustee of said Alec Murray, Bankrupt.

VII.

That on or about the 5th day of March, 1917, and within four months next preceding the date of filing of the petition of the creditors for the adjudication of said Alec Murray to be a bankrupt, the said Alec Murray purported to transfer and deliver by deed certain real estate and improvements thereon situate in the County of Bannock, State of Idaho, and of the value of Forty Thousand Dollars, to the said James A. Murray, defendant herein, for the consideration of One Dollar; that said real estate is more particularly described as follows, to-wit:

“Commencing at the Northwest corner of Lot one of Block three hundred seventy-two, of the City of Pocatello, in said County and State, at the intersection of the alley of said block and Center Street in said City, thence running in a northeasterly direction along the line between said Center Street and said lot one, fifty-one feet; thence at right angles in a southeasterly direction, across lots one, two and three, and ten feet of lot four of said block 372, a distance of one hundred feet; thence at right angles in a southwesterly direction fifty-one feet to the line of said alley; thence at right angles in a northwesterly direction along the east line of said alley one hundred feet to the place of beginning, the same being a part of said lots one, two, three, and four of said block 372, of the said City of Pocatello, in said County and State, as the same appears from the official

plat of the Pocatello townsite (now the City of Pocatello) returned to the General Land Office by the Surveyor General of Idaho, and being the premises formerly occupied by the Pocatello Opera House, and now occupied by the Auditorium Theatre Building.”

that a copy of said deed is attached hereto, marked “Exhibit A” and made a part of this petition in the same manner as though set forth in haec verba.

VIII.

That the said transfer of real estate by deed as hereinbefore set forth, was made with the intent to hinder, delay and defraud the creditors of the said Alec Murray, Bankrupt.

IX.

That the property, both real and personal, now owned by the said Alec Murray, Bankrupt, either in law or in equity, or both, is insufficient to meet the just and allowed claims of the creditors of said Alec Murray, and that the said Alec Murray, Bankrupt, had no other property, real or personal, out of which to pay the lawful claims and demands of his creditors, except the following described property, to-wit:

Lots 16, 17 and 18, Block 151, of the City of Pocatello, Bannock County, Idaho.

which said property of the said Alec Murray, Bankrupt, is of insufficient value to satisfy in whole or in any considerable part, the claim, and claims of the creditors of the said Alec Murray, Bankrupt; and that the said property is of the value of Three

Thousand Dollars, and that said property is subject to a mortgage, duly recorded in the County of Bannock, State of Idaho, for the sum of \$1500.00 in favor of E. C. White and Company.

X.

That on or about the 6th day of March, 1917, the said Alec Murray, Bankrupt, procured a loan of \$2725.00 from the First National Bank of Pocatello, Bannock County, Idaho, one of the creditors of the estate of said Alec Murray, Bankrupt, and he, at that time, represented to the said First National Bank that he, the said Alec Murray, Bankrupt, was the then owner of the property particularly described in Paragraph VII, and upon the faith and credit of said representation, by the said Alec Murray, Bankrupt, said loan was made.

XI.

That the said transfer by deed of the property as hereinbefore set forth is fraudulent and void, as against the creditors of the said Alec Murray, Bankrupt, for the reason that the same was transferred for the sole purpose of defeating and making any judgment that the creditors of the said Alec Murray, Bankrupt, might secure, of no value, and to put his said property beyond the reach of an execution; that the consideration named in said deed, as set forth in Exhibit A, hereto attached, of One Dollar is fictitious and that your petitioner is informed and believes and therefore alleged, upon information and belief, that the same is fraudulent and fictitious and that no consideration of any kind

whatever was paid by the defendant herein to the said Alec Murray, Bankrupt, for the said property.

IN CONSIDERATION WHEREFORE, and for as much as your petitioner is remediless in the premises, according to the strict rules of common law and can only have relief in a court of equity, where matters of this kind are properly cognizable, files this petition against the defendant and prays that the said transfer and deed by the said Alec Murray, Bankrupt, to the said James A. Murray, as hereinbefore particularly set forth, may be set aside and be decreed void and of no effect, and that the said defendant James A. Murray be required to re-transfer said property by good and sufficient deed to your petitioner, and that in the event of the failure or refusal of said James A. Murray, to so reconvey said property, that the Clerk of this Honorable Court, under the seal thereof, be ordered to reconvey said property by good and sufficient deed to your petitioner, and for such other and further relief as the nature of the case may require and as may be just and equitable and as this Honorable Court shall deem fit and proper.

May it please your honor to grant to this plaintiff a writ of subpoena, directed to the said defendant issued out of and under the seal of this Honorable Court, thereby commanding him at a certain time and under a certain penalty, therein to be named, personally to be and to appear before this Honorable Court, then and there to make full and true answer to this petition and to show cause, if any there may

be, why the prayer of this bill of complaint should not be granted according to the rules and practice of this Court, and to stand to and conform to such orders directed and decreed as may be made against him in the premises and as shall seem meet to equity and your petitioner will ever pray.

J. M. STEVENS,
Attorney for Petitioner,
Residing at Pocatello, Idaho.

United States of America,
District of Idaho, Bannock County.—ss.

H. E. Ray, being first duly sworn deposes and says that he is the duly elected, appointed, qualified and acting trustee of the said Alec Murray, Bankrupt; that he is the petitioner in the above entitled cause of action; that he has read the above petition and knows the contents thereof and believes the facts therein stated to be true.

H. E. RAY.

Subscribed and sworn to, before me, this 27th day of August, 1917.

(Seal.) H. A. BAKER,
Notary Public,
Residence: Pocatello, Idaho.

EXHIBIT "A".

SCHEDULE OF ASSETS AND LIABILITIES.

In the Matter of Alec Murray, Bankrupt.

	<i>Value of</i>	<i>Amount of</i>
<i>Creditors Holding Securities</i>	<i>Securities</i>	<i>Debt</i>
Bannock National Bank, Pocatello, Idaho, first mortgage		

security on ranch owned by Mr. Steel of Inkom, Idaho; bankrupt contracted note for money loaned	\$ 800.00	\$1,100.00
Stockgrowers Bank & Trust Co., Pocatello, Idaho, note made by Mrs. Boyd, as mak- er to bankrupt; due January 1st, 1918, endorsed by Robert Boyd, and by bankrupt; mon- ey advanced by bank to bank- rupt	1,000.00	919.00
E. C. White & Co., Pocatello, Idaho, first mortgage on property 512 N. 9th Avenue, Pocatello, Idaho, indebted- ness for money to bankrupt..	1,500.00	1,560.00
		<hr/>
		\$3,579.00

Creditors Whose Claims are Unsecured:

E. D. Harrison, Jeweler, Pocatello, Idaho, goods sold and delivered. Contracted for in 1916-1917	\$	380.00
Mooney & Douglas, Garage, Pocatello, Ida- ho, Work, Labor and Service, and mate- rials furnished. Contracted in 1916- 1917		381.09
Trist Auto Co., Garage, Pocatello, Idaho, Taxi Hire. Contracted 1917		35.75
Peterson Furniture Company, Furniture, Pocatello, Idaho, goods sold and deliv- ered, 1917		35.00

Idaho Power Company, Electricity, Pocatello, Idaho, Current, 1917.....	3.07
Mountain States Telephone and Telegraph Company, Phone, Pocatello, Idaho, Phone Service, 1917	4.00
H. H. Whittlesey, Druggist, Pocatello, Idaho, Goods sold and delivered, 1917.....	3.51
Toggery Clothing Company, Clothing, Pocatello, Idaho, Goods sold and delivered, 1917	38.00
Fargo Wells & Wilson Company, General Merchandise, Pocatello, Idaho. Goods sold and delivered, 1917.....	25.00
Leon Molinelli, Jeweler, Pocatello, Idaho. Goods sold and delivered, 1916.....	50.00
Pocatello Electric Supply Co., Supplies, Pocatello, Idaho, Goods sold and delivered, 1917	8.00
Tribune Company, Newspaper, Pocatello, Idaho, Goods sold and delivered, 1916-1917	50.10
Ed. Marston, Rancher, Hill City, Money loaned, 1917	31.50
E. J. Reinfeldt, South Hayes Avenue, Pocatello, Idaho, Money loaned, 1917.....	50.00
Bannock Abstract Company, Abstracts, Pocatello, Idaho, Abstracts, work, labor and services, 1917.....	12.75
Parisian Store, North Main Street, Pocatello, Idaho. Goods sold and delivered, 1916-1917	25.00

James A. Murray, c/o Murray's Bank, Butte, Mont. Note part payment purchase money on Water Plant, Pocatello, Idaho, 1914, with interest.....	28,000.00
James A. Murray, Delinquent Interest on Water Plant Bonds, 1915-1916.....	12,000.00
Citizen's Bank, Ltd., Pocatello, Idaho. Note. Money loaned	2,065.00
First National Bank, Pocatello, Idaho, Note. Money loaned.....	2,800.00
T. J. Murray, 21 E. North St., Wilkesbarre, Pa., Money loaned.....	1,100.00
Maurice Murray, 21 E. North St., Wilkesbarre, Pa., Money loaned.....	135.00
Joseph A. Murray, Kalida, Idaho, Money loaned	100.00
W. S. Sams, Pocatello, Idaho, Services.....	160.00
Greene & Higson, Pocatello, Idaho, work labor	11,000.00
Wm. J. Burns, 1804 L. C. Smith Bldg., Seattle, Washington, Services.....	312.35
	<hr/>
Total.....	\$58,805.12

Assets:

Brick House, Studio and 3 lots, 512 S. 9th St., Pocatello, Idaho. Block 151, Lots 16, 17, and 18. Subject to a first mortgage for the sum of Fifteen Hundred (\$1500.00) Dollars, made by bankrupt to E. C. White & Co. to secure an indebtedness of \$1560.00 as described in Schedule "A" (2).....	\$3,000.00
--	------------

Choses in Action:

Tom Hall, Water Service, Pocatello, Ida.....	\$ 41.50
Will Carevelis, Water Service, Pocatello, Ida.	38.00
Mittry & Co., Water Service, Pocatello, Ida.	200.00
H. E. Reddish, Water Service, Pocatello, Ida.	21.00
E. Krussman, Water Service, Pocatello, Ida.	70.00
Murphy & Co., Water Service, Pocatello, Ida.	75.00
Stockgrowers Bank, Pocatello, Idaho, De- posit	5.00
First National Bank, Pocatello, Idaho, De- posit	15.12
Bannock National Bank, Pocatello, Idaho, Deposit	3.30
Citizen's Bank, Ltd., Pocatello, Idaho, De- posit80
James H. Brady, Pocatello, Idaho, Water Service, 1913-1914-1915-1916	532.80
Total.....	<u>\$1,002.52</u>

EXHIBIT "B".

This Indenture, Made this 5th day of March, A. D. 1917, between ALEC MURRAY, of the City of Pocatello, State of Idaho, party of the first part, JAMES A. MURRAY, of Butte, Silver Bow County, Montana, party of the second part,

WITNESSETH: That the said party of the first part, for and in consideration of the sum of One

(§1.00) Dollar lawful money of the United States of America to him in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, sell and convey unto the said party of the second part and to his heirs and assigns forever, all of the following described property situate, lying and being in Bannock County, State of Idaho, and particularly bounded and described as follows, to-wit:

Commencing at the northwest corner of lot one of Block Three Hundred and seventy two of the City of Pocatello, in said County and State, at the intersection of the alley of said block and Center Street in said City, thence running in a northeasterly direction along the line between said Center Street and said lot one, fifty one feet; thence at right angles in a southeasterly direction, across lot one, two and three, and ten feet of lot four of said block three hundred and seventy two, a distance of one hundred feet; thence at right angles in a southwesterly direction fifty one feet to the line of said alley; thence at right angles in a northwesterly direction along the east line of said alley one hundred feet to the place of beginning; the same being a part of said lots one, two and three and four of said Block 372, of the said City of Pocatello, in said County and State, as the same appears from the official plat of the Pocatello Townsite (now the City of Pocatello) returned to the General Land Office by the Surveyor General of Idaho, and be-

ing the premises formerly occupied by the Pocatello Opera House, and now occupied by the Auditorium Theatre Building.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, as usually had and enjoyed.

TO HAVE AND TO HOLD, all and singular the said premises together with the appurtenances, unto the said party of the second part and to his heirs and assigns forever.

IN WITNESS WHEREOF, The said party of the first part has hereunto set his hand and seal on the day and year first above written.

ALEC MURRAY.

State of Idaho,
County of Bannock,—ss.

On this 10th day of March in the year nineteen hundred and seventeen, before me Theodore H. Gathe, a Notary Public in and for the State of Idaho, residing at Pocatello, County of Bannock, personally appeared Alec Murray known to me to be the person who executed the within instrument and acknowledge to me that he executed the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed by Notarial seal, the day and year in this certificate first above written.

THEODORE H. GATHE,

(Seal)

Notary Public.

My commission expires April 4, 1917.

Endorsed, Filed Sept. 1, 1917.

W. D. McReynolds, Clerk.

By Theo Turner, Deputy Clerk.

(Title of Court and Cause.)

No. 205.

In Equity.

SUBPOENA AD RESPONDENDUM.

The President of the United States of America to
James A. Murray, Greeting:

You are hereby commanded that you be and appear in said District Court of the United States, at the Court Room thereof, in Pocatello, in said District, within twenty days after service hereof, to answer the exigency of a bill of Complaint exhibited and filed against you in our said Court, wherein H. E. Ray, as Trustee of Alec Murray, Bankrupt, is complainant and you are defendant and further to do and receive what our said District Court shall consider in this behalf and this you are in no wise to omit under the pains and penalties of what may befall thereon.

And this is to COMMAND you the MARSHAL of said District, or your DEPUTY, to make due service of this our WRIT of SUBPOENA and to have then and there the same.

Hereof not fail.

Witness the Honorable FRANK S. DIETRICH, Judge of said District Court of the United States, and the Seal of our said Court affixed at Pocatello in said District, this first day of September in the year of our Lord One Thousand Nine Hundred and Seventeen and of the Independence of the United States the One Hundredth and 41st.

(Seal)

W. D. McREYNOLDS,

Clerk.

By Theo Turner, Deputy Clerk.

Memorandum pursuant to Equity Rule No. 12 of the Supreme Court of the United States:

The Defendant is required to file his answer or other defense in the above entitled suit in the office of the Clerk of said Court on or before the twentieth day after service; otherwise the Complainant's Bill therein may be taken *pro confesso*.

Return on Service of Writ.

United States of America,
District of Idaho,—ss.

I hereby certify and return that I served the annexed Subpoena ad Respondendum and certified copy of complaint on the therein-named James A. Murray by handing to and leaving a duplicate of within Subpoena ad Respondendum together with a certified copy of complaint, with James A. Murray, personally, at Blackfoot, in said District, on the 1st day of September, A. D. 1917.

T. B. MARTIN, U. S. Marshal.

By C. H. Arbuckle, Deputy.

Endorsed: Returned and filed Sept. 4, 1917. W. D. McReynolds, Clerk. By Pearl E. Zanger, Deputy Clerk.

(Title of Court and Cause.)

No. 205.

ANSWER TO BILL.

This defendant reserving all manner of exception that may be had to the uncertainties and imperfections of the bill on file herein comes and answers thereto or so much thereof as he is advised is material to be answered and says:

I.

That defendant has been informed and believes and therefore admits that the petitioner herein, H. E. Ray, is a citizen of the State of Idaho, and a resident of the City of Pocatello, County of Bannock, State of Idaho, and that the property described in said petition is situated in said County and State.

II.

That he, James A. Murray, defendant herein, is a citizen of the State of Montana and a resident of the City of Butte, County of Silver Bow and State of Montana.

III.

That this is a suit of a civil nature in equity between citizens of different states and arises under the laws of the United States and the amount in controversy therein exceeds the sum of Three Thousand (\$3000.00) Dollars, exclusive of interest and costs.

IV.

As to all the matters and facts contained in the allegations of paragraph four of plaintiff's bill of complaint, defendant denies any knowledge thereof, but believes the same to be true, but nevertheless does hereby require strict proof as to the truth thereof.

V.

As to the matters and facts alleged in paragraph five of plaintiff's bill of complaint, defendant denies any knowledge thereof, though he believes the same to be true, but nevertheless demands strict proof thereof.

VI.

As to the matters and facts alleged in paragraph six of plaintiff's bill of complaint, defendant denies any knowledge thereof though he believes the same to be true, but nevertheless demands strict proof thereof.

VII.

Defendant admits that on or about the 5th day of March, 1917, Alex Murray of Pocatello, County of Bannock, State of Idaho, did transfer by deed the real estate and improvements described in plaintiff's bill of complaint, to James A. Murray, defendant herein, said property being of a value of about Twenty-five thousand (\$25,000.00) Dollars, and defendant admits that the consideration recited in the said deed was One (\$1.00) Dollar, lawful money of the United States, but in this regard defendant avers that the said consideration in the said deed so recited was and is merely nominal and formal and that the true and actual consideration for the said deed and transfer so made by the said Alec Murray to the defendant herein was the fulfillment of a trust placed in the said Alec Murray by the said James A. Murray a number of years prior to and preceding the execution of the said deed of March 5, 1917, by which said trust made and entered into by and between the said James A. Murray as trustor, and Alec Murray as trustee, it was stipulated and agreed by and between the said parties that in consideration of the conveyance of the aforementioned property by the said James A. Murray to Alec Murray, the said Alec

Murray was to have and to hold the said property aforementioned in trust for the said James A. Murray; to manage the same as agent of the said James A. Murray; and to care for and protect said property, rendering to the said James A. Murray all rents and profits received from the said property, save and except a certain portion thereof which he, the said Alec Murray, was to reserve and keep for himself as compensation for his services and as reimbursement for any expenses incurred by him in connection with the care of and management of the said property and that by the said trust agreement it was provided that the said Alec Murray was to reconvey all and singular the property so conveyed to him in trust to the said James A. Murray at any time upon request of the said James A. Murray or upon his own volition, if at any time he desired to terminate the said trust. And further answering defendant avers that at the time of the conveyance of said property by the defendant James A. Murray to the said Alec Murray, he received no consideration whatsoever for said transfer and avers that said conveyance was made solely for said trust purposes and none other and the said Alec Murray never at any time owned or held any interest in said property except as hereinabove specifically set forth.

Defendant denies any knowledge or information sufficient to form a belief as regards the time when the said Alec Murray filed his petition in bankruptcy and whether said deed of March 5th, 1917, was made within four months prior thereto or not. Therefore defendant denies said allegation.

VIII.

Defendant denies that the said transfer of property by deed made and executed by Alec Murray to James A. Murray on the 5th day of March, 1917, was so made to hinder, delay or defraud the creditors of the said Alec Murray, bankrupt, but on the contrary defendant alleges that the said transfer by deed was made and executed by the said Alec Murray for the sole and only purpose of terminating the trust placed in him by the said James A. Murray as alleged in paragraph VII of this defendant's answer, and in discharge of the obligation and duty which he owed the said James A. Murray, under and by virtue of said trust, and for no other purpose whatsoever and defendant further says that said deed was made and executed by the said Alec Murray upon an express request made on the 16th day of February, 1917, by James A. Murray, trustor, acting by and through his agent and attorney James E. Murray, and all in accordance with the terms of the said trust aforementioned.

IX.

As to the matters and facts stated in paragraph nine of plaintiff's bill of complaint defendant denies any knowledge thereof but believes the same to be true, but nevertheless requires strict proof of the truth of said allegations.

X.

Answering to the allegations of paragraph ten of plaintiff's bill of complaint, defendant admits that on or about the 6th day of March, A. D. 1917, the

said Alec Murray procured a loan from the First National Bank of Pocatello, Idaho, but avers that the amount of the loan procured at said date did not exceed the sum of One Thousand (\$1,000.00) Dollars, and except as herein specifically qualified defendant, on information and belief, admits each and all of the allegations of said paragraph ten of plaintiff's bill of complaint.

XI.

Defendant specifically denies each and every allegation contained in paragraph eleven of plaintiff's bill of complaint wherein plaintiff alleges that the said transfer by deed of the property therein described is fraudulent and void as against the creditors of said Alec Murray, bankrupt, and defendant denies that the reason for making such transfer by deed was for the purpose of defeating or making any judgment that the creditors of the said Alec Murray, bankrupt, might secure, of no value or to put his said property beyond the reach of an execution, and defendant denies that the consideration named in said deed is fictitious or fraudulent, but alleges the fact to be that the transfer of said property by Alec Murray to this defendant, was in good faith and solely for the purpose of discharging the trust as set forth in paragraph VII of defendant's answer, and in this connection defendant avers that the said Alec Murray never paid any consideration or thing of value whatsoever for said property at the time the same was conveyed to him by this defendant, but at all times held the same in trust for the sole benefit

and behoof of this defendant, all of which was well known to the creditors of the said Alec Murray and particularly to the First National Bank of Pocatello, Idaho, at the time of the transaction complained of in the bill of complaint herein.

THEREFORE, Having thus made full answer to all of the matters and things contained in the bill, this defendant prays to be dismissed with his costs in this behalf incurred.

COFFIN & MAGINNIS,
JAMES E. MURRAY,
Attorneys for Defendant.

(Duly verified.)

Endorsed: Filed Sept. 22, 1917.

W. D. McReynolds, Clerk.

By Pearl E. Zanger, Deputy.

(Title of Court and Cause.)

No. 205.

DECISION.

DIETRICH, DISTRICT JUDGE:

The plaintiff is the trustee of the insolvent estate of Alec Murray, a bankrupt. The adjudication in bankruptcy was made on June 15, 1917, and this suit was commenced on the 1st day of September, 1917, for the purpose of cancelling a deed of the bankrupt, by which, for the recited consideration of one dollar, he conveyed to the defendant, his uncle, a valuable piece of real estate in Pocatello, Idaho, commonly known and referred to as the "Auditorium." The deed is dated March 5, 1917, and was

acknowledged and recorded five days later. The defendant resides at Butte, Montana, and until recently, under the name of the Pocatello Water Company, was the owner and in control of the water works supplying water to the City of Pocatello and its inhabitants. For some time George Winter and the bankrupt, both residing at Pocatello, were respectively the manager and assistant manager of the water works, and upon the death of the former the latter became manager. The defendant had numerous controversies with the city, (21 Idaho 180, 120 Pac. 812. 226 U. S. 318. 206 Fed. 72; 214 Fed. 214. 23 Idaho 444; 130 Pac. 383), and thereafter, some time prior to the commencement of this action, sold to it the entire system.

Defendant admits that there was no consideration at all for the deed in question, but contends that the bankrupt never had any equitable interest in the property, and only held the legal title in trust for him. It appears that upon June 1, 1907, the Auditorium property stood on the records of the county in the name of E. L. Chapman, defendant's bookkeeper, and upon that day Chapman conveyed it to the Monidah Trust Company, a Delaware corporation, organized apparently as a "dummy" for the defendant's uses. On June 5, 1912, the defendant caused this company to execute a warranty deed conveying the property to the bankrupt, who subsequently (apparently three days later) deeded a one-half interest therein to George Winter, who in turn at a later date reconveyed such interest. During

the long period the bankrupt held the title, there was no notice, suggestion, or intimation from either him or the defendant that he was not the real owner. He appeared so to be, upon the records of the county; he paid the taxes upon, and offered to mortgage, the property, and undoubtedly secured loans from some of his creditors because of his apparent ownership. Not only this, but in a suit brought against the defendant by the City of Pocatello, the bankrupt made an affidavit, in which he expressly asserted his ownership in fee simple, and which was successfully employed by the defendant in establishing his defense. In the instant case the bankrupt was not called as a witness, and it is to be noted that the defendant avoided any direct statement of a trust agreement. After stating that he had "no particular agreement" with the bankrupt at the time the property was conveyed, and that there was nothing said about holding the title in trust, only some general understanding, he was asked by his counsel the question, "At the time you conveyed it (the property) to him (the bankrupt), did you have any understanding that he was to convey it to you or to any one else you might designate," to which he replied, "No, no agreement." Then, to the extremely leading question, "you had an oral agreement, did you not," he responded, "Yes, sir." I didn't think we needed anything more." And upon cross examination he stated that there was no distinct agreement, just a general understanding. He doesn't testify as to what, if anything, he said, or what, if anything, the bankrupt said, nor does he

explain how or why he got such a "general understanding," or attempt to give any reason for having the transfer made by the Mondiah Trust Company, which he had apparently organized for the very purpose of holding the title to such property. He very emphatically denies that the transaction was for the purpose of delaying or evading the execution of a money judgment the city of Pocatello had procured against him. What, then, was the purpose of making the transfer? Why does he withhold the explanation which he could doubtless make of a transaction so manifestly out of the ordinary course of business? By referring to one of the suits between defendant and the city of Pocatello, the one in which the bankrupt made affidavit, a motive, and, I am convinced, the controlling motive, may be found. (See opinion of Idaho Supreme Court, 23 Idaho, 447; 130 Pac. 383, together with dissenting opinion.) It there appears that the city, being dissatisfied with the rates charged by the defendant for water service, desired to have new rates established by a commission, as provided by the laws of the state. Under such laws, the city was authorized to appoint two commissioners and the defendant two, and these four could select a fifth. To be qualified, such commissioners must be taxpayers of the city. Accordingly the city made two appointments, and, the defendant having refused to act, it brought the suit to compel him to do so. After a hearing and considerable delay, the city's petition was granted. (21 Idaho, 812; 226 U. S. 318.) It will be noted that the decision in

the State Supreme Court was rendered on January 3, 1912. It thereupon became obvious that unless this decision should be reversed in the Supreme Court of the United States it would be necessary for the defendant to appoint two commissioners who were taxpayers in Pocatello, and apparently he desired to appoint the bankrupt and Winter as such commissioners. Apparently also the only property they had by which they could qualify as taxpayers was the Auditorium, which the defendant caused to be transferred to the bankrupt on June 5, 1912, after the decision of the Supreme Court of the State, and while the cause was still pending in the Supreme Court or the United States. The City, contending that the bankrupt and Winter were not qualified, brought the proceedings reported in the 23rd Idaho, to test their qualifications. In that proceeding the only construction I can place upon the defendant's answer and upon the affidavits of Winter and the bankrupt, filed and used by him, is that thereby he intended to represent to the court, and desired it to believe, that they, Winter and the bankrupt, and not he, owned the Auditorium, which is doubtless the property referred to in such answer and affidavits. In the absence of any other explanation, therefore, is the inference not irresistible that the defendant caused the Auditorium to be conveyed to the bankrupt and a half interest therein later to Winter, in order that they might qualify as his commissioners? The subject matter with which the commission would deal was of profound interest to

him. He was deeply concerned in having commissioners who would be subservient to his wishes. He could not, and it is presumed he knew he could not, properly qualify Winter and the bankrupt by merely "putting property in their name," of which, however, he continued to be the real owner. Can anyone suppose that he would ever have thought he could succeed in the proceeding in the Supreme Court upon the showing and the claim which he is here trying to make? If the bankrupt and Winter simply held the naked, legal title, with no real interest in the property, the whole transaction was a sham, and the defendant perpetrated a plain fraud upon the state court. Measurably reprehensible through his conduct may have been even in the view I have taken, I am not inclined to think that he intended to, or did, go so far. I am convinced that he intended that the bankrupt should take absolute title to the property, so completely that both he and the bankrupt could, without committing perjury, take oath that it belonged to the latter. He hoped, and may have even expected, that ultimately the bankrupt would reconvey it to him. In consideration of the large interests which he had at stake, he may very well have been willing to take the chance, which, when he considered the relation both of kinship and employment, he probably thought was not great. But it still remains true that he gave the property to the bankrupt without any reservations, conditions or qualifications. It is immaterial that he hoped to get the property back. The giving of a gift with the hope that the donee will at some time return it or its value, does not oper-

ate to create a trust or charge the donee with a trusteeship. For his own purposes the defendant was under the necessity of making an absolute transfer. To have put the property in trust would have been futile. Having in mind the position he had assumed in the State Supreme Court, it is not a matter for surprise that when upon the witness stand here, he was unwilling to say that there was a trust, and was reluctant to testify that there was any express condition of any character. In his representations to the Supreme Court, and in the use of the bankrupt's affidavit of absolute ownership, he in effect disclaimed any interest in and reaffirmed what the deed to the bankrupt legally imports. On March 5, 1917, therefore, the bankrupt was the owner of the property, and was under no legal obligation to convey it to the defendant. Hence the reconveyance was voluntary and was in law a mere gift. It was not to discharge any legal obligation or in pursuance of any trust, for no trust was ever created. Such conveyance, therefore, cannot, any more than any other gift, be sustained as against the creditors of the donor.

A side light is thrown upon the transaction by the later dealings between the parties touching the water works themselves. It seems that subject to an issue of bonds, which he himself held, the defendant conveyed to this same impecunious but convenient nephew, the water works, for an ostensible consideration of \$30,000.00, for which he took a promissory note. He didn't sell to the city (such, as I understand, is the import of his testimony) the water

system, but sold to it the bonds, and then got his nephew to give the system to the city, and he in turn forgave the \$30,000.00 note.

To recapitulate, the deed from the Moniday Trust Company to the bankrupt makes a prima facie case of absolute ownership in the latter. This is strongly fortified by his declarations and use of the property while in possession and holding the record title, and further by the defendant's own representations and conduct in the city suit. To overthrow the case thus made we have only the vague and guarded statement elicited by a leading question, that there was some general understanding that the property would be reconveyed. In the face of such a record, I am unable to credit the view now urged in the argument that there was an agreement by which the property was impressed with a trust. That the deed which the trustee attacks was without consideration is admitted, and in law must be deemed to have constituted a gift, and nothing more. As such it was voidable at the instance of the bankrupt's creditors, and hence should be cancelled upon the application of his trustee in bankruptcy. If it be said that a moral consideration is to be found in the fact that the bankrupt paid nothing for the property, and may have always intended to re-deed it to defendant, the reply is that to convert such a moral consideration into a legal one would be to transform a transaction of doubtful propriety into an odious fraud.

Let a decree go in favor of the plaintiff, as prayed.

Filed Dec. 14, 1917.

W. D. McReynolds, Clerk.

(Title of Court and Cause.)

No. 205.

DECREE.

BE IT REMEMBERED that this cause came on regularly to be heard on the 12th day of October, 1917, at the regular October term of the above entitled court, sitting in the City of Pocatello, Bannock County, State of Idaho; J. M. Stevens, Esq., appearing as counsel for the petitioner and James E. Murray, Esq., and Thos. C. Coffin, Esq., appearing as counsel for the defendant.

Whereupon testimony and documentary evidence was introduced on the part of both petitioner and defendant, from which it appears to the court that all of the material allegations of the petition of H. E. Ray, as Trustee of the Estate of Alec Murray, Bankrupt, are true and supported by testimony and documentary evidence free from all legal objections as to its competency, relevency, and materiality and that the petitioner is entitled to the relief prayed for in his petition.

Now, therefore, on motion of J. M. Stevens, Esq., counsel for the petitioner in the above entitled cause, IT IS ORDERED, ADJUDGED AND DECREED, that the defendant James A. Murray, forthwith convey by good and sufficient deed of conveyance all his right, title and interest in and to the following described property, to-wit:

Commencing at the northwest corner of lot one of block three hundred seventy-two, of the City of Pocatello, in said County and State, at

the intersection of the alley of said block and Center Street in said City, thence running in a northeasterly direction along the line between said Center Street and said lot one, fifty one feet; thence at right angles in a southeasterly direction, across lots one, two and three, and ten feet of lot four of said block 372, a distance of one hundred feet; thence at right angles in a southwesterly direction fifty-one feet to the line of said alley; thence at right angles in a northwesterly direction along the east line of said alley one hundred feet to the place of beginning, the same being a part of said lots one, two, three and four of said Block 372, of the said City of Pocatello, in said County and State, as the same appears from the official plat of the Pocatello townsite (now the city of Pocatello) returned to the General Land Office by the Surveyor General of Idaho, and being the premises formerly occupied by the Pocatello Opera House and now occupied by the Auditorium Theatre Building.”

said property being the property herein in dispute, to H. E. Ray as Trustee of the Estate of Alec Murray, Bankrupt; that in the event the said defendant James A. Murray fails and refuses for thirty days from the date hereof to make said conveyance, that the Clerk of the above entitled court, under his name and the seal of this court forthwith, by good and sufficient deed convey all the right, title and interest of the said James A. Murray in and to the above

described property, to H. E. Ray, as Trustee of the Estate of Alec Murray, Bankrupt, and that the petitioner herein have his costs assessed at \$.....

Dated this 5th day of January, 1918.

FRANK S. DIETRICH,

Judge.

Filed Jan. 5, 1918.

W. D. McReynolds, Clerk.

(Title of Court and Cause.)

No. 205.

STATEMENT OF EVIDENCE.

BE IT REMEMBERED, That the above entitled suit came regularly on for trial before the Hon. Frank S. Dietrich, Judge of the above entitled court, on the 12th day of October, A. D. 1917, at Pocatello, Idaho, James M. Stevens, Esq., appearing as solicitor for complainant and Thos. C. Coffin, Esq., and James E. Murray, Esq., appearing as solicitors for defendant. Thereupon the following proceedings were had and done and the following evidence being all the evidence, submitted at said trial, was introduced, to-wit:

MR. COFFIN: If it please your Honor this case has been reached much sooner than anticipated and I have been unable to reach Mr. James E. Murray, of Butte, Montana, Solicitor for defendant, who has had charge of the case for defendant. I had notified him that the case would not likely be reached before the 20th, and I would therefore respectfully request the court to grant a continuance.

THE COURT: No continuance will be granted, but if Mr. Murray does not arrive during the present hearing he will be permitted to present any evidence he may have before an Examiner to be appointed by the court. We will proceed with the hearing for the present.

FINIS BENTLEY: Produced as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By MR. STEVENS:

My name is Finis Bentley, I am an attorney-at-law residing at Pocatello, Idaho, and am in partnership with Mr. E. C. White, referee in bankruptcy, in the law business and assist him in taking care of these matters as his clerk. I am familiar with the bankruptcy proceeding against Alec Murray and I have all of the files here.

THE COURT: You needn't identify them separately, I assume. Name them to the stenographer, and they will be deemed to be in evidence then.

THE WITNESS: The creditors' petition to have Alec Murray adjudged an involuntary bankrupt, filed May 14th, 1917, an order upon the bankrupt to furnish schedules of his assets and liabilities, and the schedule of the assets and liabilities of Alec Murray, as filed with the United States District Court Clerk, a correct copy of which is attached to the Bill of Complaint herein.

It is agreed by the parties that the foregoing papers are all in the usual form and are material only

for the purpose of showing the date of the filing of the petition in bankruptcy, to-wit: May 14, 1917; the order of reference and the adjudication in bankruptcy filed June 15, 1917, and it will not be necessary to incorporate these papers in the statement of the evidence upon this appeal.

Q. Was a Trustee appointed in this case?

A. Yes, sir, Mr. H. E. Ray, was appointed as trustee.

THE COURT: Is it admitted that Mr. H. E. Ray is the qualified trustee?

MR. COFFIN: Yes, Your Honor.

MR. STEVENS: There would be no occasion then to introduce either the bond or the order?

THE COURT: No.

THE WITNESS: I have examined the files to ascertain whether Mr. James A. Murray, defendant, made any claim against this bankrupt estate, and find that defendant filed no claim with the referee. The defendant James A. Murray is listed among the creditors of Alec Murray, as a creditor in the sum of \$28,000 on one claim and \$12,000 on a second claim. The date of the filing of the petition with the Clerk of the United States District Court is May 14, 1917, and with E. C. White, as referee, June 14, 1917, and the date of the adjudication is June 15, 1917, and was filed of that date.

Witness excused.

HARRY J. FOX, produced as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By MR. STEVENS:

I am Harry J. Fox of Pocatello, Idaho, Deputy Clerk of the Court, and ex-officio auditor and recorder of Bannock County, Idaho. As such deputy I have charge of the records of this county. I have present in court the records of this county pertaining to deeds and transactions between Alec Murray and James A. Murray. Referring to page 88 of Sheriff's Certificate of Sales, I find a Sheriff's Certificate of Sale in the case of E. L. Chapman, Plaintiff, vs. the Auditorium Company, Limited, dated December 5, 1905. The judgment and interest, counsel fees, etc., constituting the consideration, amount to the sum of \$6.493, and showing sale of the property involved herein to E. L. Chapman.

Thereupon there was introduced in evidence the following deeds of conveyance affecting the title to the property involved in this suit, to-wit: Deed from W. J. Harvey, Sheriff, to E. L. Chapman, consideration named \$6493.00, dated December 8, 1906, and recorded in Book 15 of deeds at page 531; Also deed from E. L. Chapman and Carrie Chapman to Monidah Trust, a corporation, organized under the laws of the State of Delaware and doing business in the State of Montana, consideration being \$1.00, said deed being of date January 5, 1907, and recorded in Book 15 of deeds at page 621; Also a deed from E. L. Chapman and Carrie Chapman to Monidah Trust, bearing date June 1st, 1907, consideration being \$1.00, conveying the same property to the

Monidah Trust; Also a deed from Monidah Trust the corporation aforesaid to Alec Murray, consideration mentioned \$1.00, dated June 5, 1912, conveying the same property above mentioned to Alec Murray, recorded June 8, 1912, in Book 21 of Deeds, at page 550; Also a deed from Alec Murray to George Winter, dated June 8, 1912, conveying a one-half interest in the same property, consideration named \$1.00, recorded in Book 23 of Deeds at page 116; Also a deed from George Winter to Alec Murray, dated February 13, 1914, conveying a one-half interest in the same property to Alec Murray, consideration mentioned \$1.00, recorded Book 29 of Deeds at page 100. Also a deed from Marion Winter to Alec Murray, dated December 29th, 1914, conveying one-half interest in the same property to the said Alec Murray, consideration mentioned \$1.00, recorded in Book 29 of deeds, page 228. Also a further deed dated March 5, 1917, from Alec Murray to James A. Murray conveying to James A. Murray the same property above mentioned, consideration named \$1.00, recorded in Book 31 of Deeds at page 462. All of these deeds being of record in the office of the County Clerk and Recorder of Bannock County, State of Idaho, where said property is situated and all of said deeds and records referring to the Auditorium property, which is in question in this proceeding.

THE COURT: It is this last deed that you are seeking to have set aside?

MR. STEVENS: Yes, sir. It is the last deed we are seeking to have set aside. A correct copy of this

deed is attached to the bill of complaint herein and the execution and delivery of the deed is admitted by the answer, and Your Honor will note by the date that it is within the four months' period provided by the statute.

THE COURT: The witness may be excused and permitted to take these records with him.

CARL A. VALENTINE, produced as a witness on behalf of plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By MR. STEVENS:

My name is Carl A. Valentine. I live in Pocatello, and am acquainted with Alec Murray, now bankrupt. I have known him since he came to Pocatello, a number of years prior to the bankruptcy. He did business with our bank. I am president of the First National Bank of this City. I had a conversation with Mr. Murray at the time we advanced money to him, relative to his ownership of the property in question the Auditorium building, in this city.

MR. COFFIN: We object to the question as not proper, on the ground that it is incompetent, irrelevant and immaterial, and cannot in any sense be used against the defendant in this case. I will state, Your Honor, that I am somewhat at sea making that objection. I can't tell just what Mr. Murray's line of defense is, and it puts me in a rather embarrassing position, because most of this is in rebuttal to the case in chief.

THE COURT: Well, inasmuch as it is being

tried before the court, I will permit you to interpose any objection later on. This conversation to which you refer, was that while the legal title was in Mr. Murray, the bankrupt?

MR. STEVENS: It was at a time when he went to the bank to borrow money, and prior to the bankruptcy, and while the title was still in him, and in this conversation he made representations as to his ownership. And we charge fraud, if Your Honor please.

THE COURT: I will hear the testimony, and you may make your objections later, except of course, any formal objection such as to competency of books and papers or as to identification and things of that kind, those ought not to be made later.

THE WITNESS: Mr. Murray came into the bank and asked for a loan, and I told him that I would take the matter up with our loan committee. Before doing so I asked him as to his holdings, and he made the statement that he was the owner of the Auditorium building, and that if the loan committee insisted he would give them a mortgage on the Auditorium for the loan; that he thought that inasmuch as the loan was not a large one, and that it would only be for a short time, that he shouldn't be required to give security on a property that was worth the amount of money that the Auditorium was worth. While we were discussing it our vice-president, Mr. Merrill, was sitting at his desk—our desks were right together, were, in the old place, the same as they are now—and he also entered into the conversation, and

Mr. Murray explained to us both that the property was absolutely his, and if, after it had been discussed by the loan committee, the loan committee insisted on security to the extent of a mortgage, that he would furnish a mortgage upon this property.

We made the loan that he applied for at that time upon the faith of his ownership of this property, and that is the loan, at least in part, for which we have filed claim against the bankrupt estate. The matter was discussed at different times on account of smaller loans that he had previous to this additional loan, and it was all made up into this last note. It was upon the faith of his ownership of this property that we made the loan.

CROSS EXAMINATION

By MR. COFFIN:

I couldn't give you the exact date of this conversation. I probably could by looking up our records and knowing just the date the loan was made. It was not the date that the present note carries. The note was renewed again at a later date because he failed to take care of it. I wouldn't attempt to estimate about when the conversation was. I can very easily tell from our records when that particular loan was made, within one or two days. I don't think the note was made up the same day it was passed on by the loan committee. I think it was made one or two days later. But our records will show absolutely the day the note was made out. I never had any conversation with James A. Murray about the ownership of the Auditorium.

RE-DIRECT EXAMINATION

By MR. STEVENS:

It was never intimated to me that anyone else had any interest in the Auditorium except Alec Murray, or any claim to any part of it. I had no information only that the property absolutely belonged to him. The records indicated it, and Mr. Murray himself made the statement at different times that he was the absolute owner of the property and I had the records examined.

MR. COFFIN: Will Mr. Murray have the opportunity of cross examining this witness?

THE COURT: Yes he may be recalled when Mr. Murray comes.

MR. STEVENS: Q. Mr. Valentine, in reference to the claim you presented, is that a valid claim against Alec Murray, the bankrupt?

A. Yes, sir, it is due from this bankrupt estate to our bank at this time. It has been filed with the referee and no part of it has been paid. It has also been correctly listed by Alec Murray in his schedule of liabilities.

Witness excused.

D. W. CHURCH, produced as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By MR. STEVENS:

My name is D. W. Church. I have lived in Pocatello for thirty-four years. I am Cashier of the Bannock National Bank, and am acquainted with

Alec Murray, and have known him in the neighborhood of ten years probably. I have known him as long as he has been here. He did business with the Bannock National Bank occasionally. Acting for the Bannock National Bank, I made loans to Alec Murray, and have filed a valid claim in the bankruptcy court against the bankrupt estate.

Q. Will you tell the court whether or not this money was loaned upon any representation of ownership of this Auditorium property?

A. Well, not at the time. Mr. Murray did business with us occasionally, and I made him small loans. I remember distinctly of asking him at one time—whether it was in connection with this particular loan or not I don't remember—but he would come in occasionally, and I would loan him some money, and never thought of taking any security from him, only when he offered it. Sometimes he offered it. And I incidentally asked him at one time, "You own the opera house, do you," although I had seen it on the record, and he said, "Yes," he did. And I was glad to loan him money and get his business, and I did it on the strength of his owning good property in Pocatello and being connected with the Water Company, and also a nephew of J. A. Murray.

Q. Would you have been willing, had he not owned property, to have loaned him the money, or were these loans made on the faith of him holding that property and owning it.

A. If he hadn't owned property I probably would have asked him to put up some kind of security. It

was upon the faith of these things we loaned the money. Our claim has not been paid and it is still a valid, subsisting claim against Alec Murray. The obligations are past due.

MR. STEVENS: That is all.

CROSS EXAMINATION

By MR. COFFIN:

I was reasonably well acquainted with Alec Murray, casually. The report around town was that whatever property he had had been given to him by his uncle, James A. Murray. He was a young man, but as to whether or not he was considered fairly fast, I don't know—about like all other young men, I guess. He never drank or gambled that I knew anything about or ever heard about. I placed practically all the faith that I placed in Alec Murray, as a matter of fact, by reason of his relationship with James A. Murray, in connection with his owning the opera house. I never took up with James A. Murray the question of Alec Murray's ownership of this property.

Q. You took nothing but Alec Murray's statements and the general impression that you received from his connection with the Water Company and James A. Murray?

A. I knew he owned the opera house, because I had seen it on record, but I didn't attempt to find out whether his title to the property was as a trustee or in himself. I didn't know anything about that.

Q. You had been satisfied when you found that the records showed title in Alec Murray?

A. He owned the opera house, it was generally conceded.

Q. And you saw by the record that he had paid \$1.00 consideration for it?

A. I don't know as that impressed me at all. The only thing is that I was casually going over the books and run across the transaction of James A. Murray to Alec Murray. I wasn't looking for it really, only just happened to see the instrument, and never went into it at all, never cared anything about it, only the fact.

Q. As a matter of fact, Mr. Church, didn't you place most of your faith in Alec Murray and loan him money upon the general faith of his connection with the Water Company, his relationship with James A. Murray, and his apparent prosperity?

A. All that, combined with the fact that the title to the opera house rested in him. I rather thought that he was entitled to the loan of a few hundred dollars. He used to come in and pay his loans off, and I would loan him some more money.

THE COURT: By opera house you mean this auditorium property?

A. Yes, this Auditorium.

THE COURT: Gentlemen, we shall suspend at the present time. I will hear you at two o'clock.

MR. COFFIN: I was going to ask at the conclusion of the plaintiff's case if the court would be willing to permit Mr. Murray to put his testimony in before a referee here, with the privilege of cross examination, and send that to the court as soon as we can get it.

MR. STEVENS: I think Mr. Coffin and I have stipulated, without bringing the assessor or collector or treasurer here, that the record shows this property taxed to Alec Murray, and the receipts are shown as paid by Alec Murray.

MR. COFFIN: For the year 1916 the record shows that Alec Murray paid half the taxes, and it was assessed to Alec Murray.

MR. STEVENS: And in addition to that, the statement which is required to be filed, listing property, was also signed by Alec Murray.

MR. COFFIN. Yes, we will admit that. That is all a matter of record. During all the years it has been assessed to Mr. Alec Murray, and at no time to James A. Murray, the records never show the title to James A. Murray and it would necessarily follow that if Alec Murray held the record title it would be assessed to him.

MR. STEVENS: That is what the record shows.

MR. COFFIN: That is all right with us.

THE COURT: Then it will be admitted that the property was assessed to Alec Murray from 1912 to 1916 inclusive?

MR. STEVENS: Yes.

I. N. ANTHERS, produced as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By MR. STEVENS:

My name is I. N. Anthes. I live in Pocatello, and am president of the Citizens Bank of Pocatello. I

am acquainted with Alec Murray and have known him ever since he has been in Pocatello. He did some business with the Citizens Bank, of which I am president. I have been connected with the Citizen's Bank ever since its organization, and ever since Mr. Murray has lived in Pocatello. During the years I have been connected with the bank Mr. Murray received credit at that bank. I never discussed with him the nature of his assets, in making loans to him, but I know from another source of the property in his name. I had Mr. E. C. White look up his property standing. Mr. White stated to me that he had had it looked up. I don't remember whether he said he did it himself or had some one else look it up, and he said the title to the Auditorium was in Alec Murray's name. In making loans to him the Citizens Bank relied upon this as one of the sources upon which it based its estimate of his credit.

Q. Did he have any other property that you know of, Miss Anthes, of any considerable value?

A. Not of any particular value. The first money we let him have was to pay on an automobile that he bought. He had an equity in that. At different time he carried his various accounts with us. He had a personal account, and an Auditorium account, and then he had the Water Company account. I know that he used some of the rents from the auditorium to make payments on the indebtedness to us for money we loaned him to buy the automobile.

Q. I think you didn't just answer my question, as to whether or not the information you received

as to his ownership of the Auditorium was really the basis of his credit with your bank?

A. Well, to some extent; not altogether.

Q. That is one of the things that went to make up his standing with you?

A. That is one of the considerations.

Q. You regarded him as the owner of this property, in making these loans?

A. I did. I have filed our claim in the bankrupt estate for the money due our bank. Our claim has never been paid and it is past due and is a just claim against Mr. Murray. It was demand paper and was due any time we demanded payment.

MR. STEVENS: You may cross examine.

CROSS EXAMINATION

By MR. COFFIN:

I couldn't say how large our loans to Mr. Murray were. I don't remember the original amount without looking it up. I think it was near \$2,000. I did not take a mortgage on any of his property. The fact that he was a nephew of James A. Murray had nothing to do with our loaning that money. I relied on the fact that he was James A. Murray's nephew and the fact that he was the owner of the Auditorium.

Q. If he hadn't been a nephew of James A. Murray, would you have loaned him \$2,000?

A. Well, I don't know about that.

Q. Isn't it a fact, Miss Anthes, that the general impression which prevailed around here was that James A. Murray was back of Alec Murray, and that

was the real moving cause for his receiving credit?

A. No, I don't think so. If I hadn't known that he had this property in his name and figured that I would be able to jump on the property any time I thought it was necessary, he wouldn't have gotten the money to any such amount as he did.

Q. Did you know how he obtained title to the property?

A. I just understood that Mr. Murray made him a present of it.

Witness excused.

MR. STEVENS: I think, Mr. Coffin, you admit in your answer that this property is of the value of \$25,000?

MR. COFFIN: Yes, that it is above \$3,000.

MR. STEVENS: We rest, Your Honor.

MR. COFFIN: Your Honor. I am satisfied that there is some very good reason for my failure to have heard from Mr. Murray, and I would like, if the Court feels that it consistently can, to permit Mr. Murray to put his testimony in here before a referee, and send the transcript of the testimony to Your Honor, that is, if we can make such a showing as would justify it when he gets here. My telegram yesterday I believe was delivered all right, and I can't understand why I haven't heard from his office at least.

THE COURT: Did you prepare the answer in the case?

MR. COFFIN: He prepared it. We were only in the case as local counsel. He wanted someone here to represent him.

THE COURT: Is there any objection to that, provided it is done very promptly?

MR. STEVENS: We are of course, very anxious to have the matter finished, and if the court is going to extend this courtesy I assume the matter will be taken here. I don't feel that we should be called to Butte to take the testimony, and we feel that under the peculiar condition of the record that we would want to cross examine Mr. Murray.

THE COURT: Yes, of course whatever hearing there would be must be here, so that you will be put to no more expense or trouble than if the trial had gone on today, and it will have to be at the expense, so far as stenographer, etc., is concerned, any extra expense will have to be borne by the defendant. I think I will fix the time to take it not later than next Wednesday, and Evelyn S. Keys is appointed special examiner to take testimony offered by defendant. I will just direct that the cause be submitted upon briefs. The record apparently is very short, so far as anything I have heard is concerned, and that which comes in in the form of depositions before Evelyn S. Keys, as special examiner, I can perhaps examine just as well without argument as with it, so that it will be merely a question of law. You may have ten days after the evidence is closed in which to submit your briefs. You can submit them at the same time, gentlemen.

Adjourned.

That thereafter and pursuant to the order of the court this cause came regularly on for further hear-

ing before Evelyn S. Keys, Special Examiner, by said Court appointed and the following testimony was thereupon offered:

JAMES A. MURRAY, being first duly sworn, testified as follows:

EXAMINATION BY MR. JAMES E. MURRAY:

I am the defendant in this action, James A. Murray. I am acquainted with Alec Murray, the bankrupt in this proceeding. He came to Pocatello sometime prior to 1912. About 1910 or 1911. I first became familiar with the Auditorium property sometime in 1906 or 1907. I am the President of the Monidah Trust Company. The deed introduced in evidence here shows a conveyance from the Monidah Trust Company to Alec Murray in 1912. I ordered it drawn up and signed it as President of the Trust Company. I organized the Monidah Trust Company and own all the stock in the Monidah Trust Company. All but a little stock I placed in other people's hands so they could act as directors. But all the stock is really owned by me.

Q. At the time you executed this deed from the Monidah Trust Company to Alec Murray, what understanding or agreement did you have with him in connection with any trust?

MR. STEVENS: We object to the question on the ground that the record itself would be the best evidence, and in the deed from the Monidah Trust Company to Alec Murray, no reference whatever is made to any trust arrangement, the deed being for a valuable consideration and absolute in form, no

reference whatever being made to any agreement; and for the further reason that any trust agreement under the statutes of Idaho, affecting title to real estate, in order to be valid against bona fide creditors must be in writing, where same affects title to real estate.

A. No particular agreement. I put it in his name for my own convenience.

Q. Was anything said with reference to him holding it merely in trust for you?

A. That was generally understood, that was all. He deeded an interest in it to George Winter at my request, and Mr. Winter made a return deed at my request.

Q. At the time you conveyed it to him, did you have an understanding that he was to reconvey it to you or to any one else you might designate?

A. No, no agreement.

Q. You had an oral agreement, did you not?

A. Yes, sir, I didn't think we needed anything more.

Q. At the time the deed was executed from the Monidah Trust Company, was there any consideration paid by Alex Murray for the deed?

A. Not a nickel—not so much as a nickel.

Q. Was there actually a dollar paid?

A. In form, but he never paid so much as a postage stamp.

Q. The record here show a conveyance to you from Alec Murray in March 5, 1917—did you request him to convey that property back?

A. Yes, sir.

Q. Was there any consideration paid at that time?

A. Not a nickel—not so much as a nickel. As a matter of fact, never at any time did I think for a minute he had as much interest in that property as you have right now.

Q. During the time he held this property in his name, did you know or ever hear of him borrowing any money on the title standing in his name.

A. No, and if I had, he would have reconveyed it right then.

Q. Did any of the officers of these banks who are making claim against his estate at any time inquire of you in reference to his title to that property?

A. No, didn't know he owed them a dollar.

Q. At the time he held this title, was he working as Manager of the Water Company?

A. No, Mr. Winter was manager and he was assistant. After Mr. Winter's death, he was manager. He stepped into Mr. Winter's shoes, and received a salary for work as such Manager.

Q. At the time you first became interested in the Auditorium property, in what way did you become interested there?

A. I acquired stock from some of the stockholders and there was a mortgage on it.

Q. By the First National Bank?

A. Oh, I don't know. I turned it over to a man by the name of Chapman—he was my bookkeeper—for the purpose of straightening up the matter.

Q. Upon the foreclosure of the mortgage, it was bid in by Mr. Chapman, was it not?

A. I think so.

Q. And then how did it come to be conveyed to the Monidah Trust Company?

A. Oh, I was the Monidah Trust Company. I had him make a deed.

Q. Mr. Chapman, you say, was your bookkeeper.

A. Yes, sir, Manager and bookkeeper.

CROSS EXAMINATION BY J. M. STEVENS:

This Auditorium property has never stood on the records of this county in my name. Not in the name of James Murray. I had considerable litigation against the City of Pocatello, and at one time the City of Pocatello acquired quite a large judgment against me in the State Court, but I am not aware of the proceedings had in that case. At that time the record title stood in the name of Mr. Winter for one-half interest, and Mr. Alec Murray for one-half interest. That arrangement was in accordance with my order, and the proceedings had in that case were under my order. Whatever was done in that case by Alec Murray was under my order and under my direction. And whatever was done in that case by Mr. Winter was under my direction and under my order. Wherever there was money involved. This Mr. Chapman was an agent of mine.

I was aware of the fact that Alec Murray deeded part of this property to Mr. Winter. I told him to, and it was reconveyed by my order.

Q. You say there was no consideration for the deed from Murray to you?

A. No, sir.

Q. You knew this property had stood in the name of Alec Murray from about—

A. For about four or five years, from about the 8th of June, 1912, up until it was redeemed to me. Practically five years. I will say this, that several times I had it on my mind to have it transferred but let it go. I knew it stood in his name for practically five years.

Q. You knew that Mr. Murray held himself out as the owner of that opera house property?

A. I did not.

Q. Wasn't that by your own suggestion on account of that judgment being against you in Pocatello?

A. So far from my mind as the moon. That judgment didn't give me that much concern. Never dreamed of such a thing.

Q. The agreement between the Monidah Trust Company and Mr. Murray was not in writing?

A. No writing between us.

Q. No writing between you and Mr. Murray?

A. No, sir.

Q. You said no distinct agreement but just a general understanding.

A. Yes, sir.

Q. You placed the property in his name and allowed it to stand with the understanding that when you wanted it you could get it back?

A. Yes, sir.

Q. And during the time did you know that Mr. Murray paid the taxes on the opera house.

A. He paid it out of the Water Company.

Q. You know that of your own knowledge?

A. Mr. Winter paid it out of the water money and when he was manager, he paid it out of the company money.

Q. You knew that the opera house—I mean the Auditorium property where I have said opera house—was assessed during all these years to Alec Murray?

A. Yes, it must have been.

Q. Did you know, Mr. Murray, that Mr. Alec Murray carried several separate accounts in the Citizens Bank.

A. I did not.

Q. One account for the Water Company, a personal account, and an account for the Auditorium.

A. I did not.

Q. And did you know, Mr. Murray, that Mr. Alec Murray paid the taxes upon this property out of his own personal fund?

A. No, sir. I sent him the taxes for the last two years. I have forgotten how much, but I sent it. The other time these came out of the Water Company. He had no money of his own, buying automobiles and one thing another.

RE-EXAMINATION BY MR. JAMES E. MURRAY:

Q. Mr. Murray, is it unusual for you to carry property situated in different parts of the country in the name of other parties?

MR. STEVENS: I object on the ground that it

would be immaterial and would not be binding upon the claims of these creditors.

A. I believe I have some in your name now which I expect to have deeded back pretty soon. I am going to have those matters straightened up.

Q. You have also had property in Mr. King's name.

A. Yes, sir.

Q. Also in other cities besides Butte?

A. Oh, I have done that right along, down in California, in San Diego, but after this suit I will straighten up things.

Q. Was there any judgment connected with this City litigation here that you attempted to evade in any way?

A. Why, no.

Q. Was there any money judgment they attempted to collect against you?

A. No, sir. They got a judgment—

Q. That was a penalty judgment. Do you know of any money judgment they obtained against you—any judgment for money?

A. No, if they had I would have paid it. I was always able to pay it. I had so many lawsuits I didn't pay much attention to them. Winter was always mixed up. Full of whiskey, I expect.

Witness excused.

JAMES E. MURRAY, being first duly sworn, testified on behalf of the defendant, as follows:

DIRECT EXAMINATION by

MR. COFFIN:

Q. Your name is James E. Murray?

A. Yes.

Q. How long have you been Mr. James A. Murray's attorney?

A. About 16 years. Since 1901.

Q. Were you Mr. Murray's attorney at the time of the foreclosure of the mortgage on the Auditorium property by Mr. Chapman?

A. Yes. But not connected with the foreclosure of that suit. Some other attorneys. Terrell, I believe.

Q. After the foreclosure of that suit and after the title reached Mr. Chapman, were you familiar with the matter?

A. Yes, sir; about the time that matter was closed the Monidah Trust Company had been organized under the laws of the State of Delaware. The company was organized by him for the purpose of holding title to property in various parts of the country, and he instructed Mr. Chapman to convey this property to the Monidah Trust Company.

Q. Then, calling your attention to the deed, a certified copy of which is in evidence, from the Monidah Trust Company to Mr. Murray, were you attorney for Mr. James Murray?

A. Yes, sir.

Q. And you were an officer of the Monidah Trust Company at that time?

A. Director and Vice President.

Q. State whether you know the circumstances surrounding the giving of that deed to Mr. Alec Murray.

A. I remember the occasion. Mr. Murray merely directed me to draw up a deed from the Monidah Trust Company to Alec Murray, and the deed was drawn up and executed by Mr. Murray as President of the Trust Company, conveying the property to Alec Murray, and at that time there was an understanding that Alec was to deed it back to Mr. Murray or to anyone he might name.

Q. Was Alec Murray present at that time?

A. Not at the time the deed was prepared, but he had been coming back and forth between Pocatello and Butte, and the matter was discussed on one or two different occasions that the property was to be re-conveyed. I was not present at all of the conversations between Mr. James A. Murray and Alec Murray, but I remember it was discussed at some time I was present. At the time this deed was given I was acting as James A. Murray's attorney. And as such, I had charge of the transaction. I prepared the papers and talked to Alec about it on one or two different occasions, and at the time it was reconveyed, I wrote to Alec and told him to reconvey.

At the time it was conveyed to Alec Murray it was with the understanding, as stated by Mr. James A. Murray, that he was to hold the property for him and reconvey it to him or to anyone whom he might name, and I believe he told him then, or some time after, to convey one-half of it to Mr. Winter, and

some time after he did convey one-half of it to Mr. Winter. At that time Mr. Murray was largely interested in Pocatello property, Mr. Alec Murray working for him then. He was associated with Mr. Winter, and after Mr. Winter's death was in charge of the property. I was also acting as Mr. Murray's attorney at the time of the reconveyance.

Q. I wish you would state the circumstances at that time.

MR. STEVENS: Object as immaterial.

A. Here is the letter from Alec enclosing the deed to me.

Q. Do you wish it admitted as evidence?

A. Don't think it is necessary.

Q. I wish you would state the circumstances surrounding the reconveyance.

A. I wrote him a letter asking him to reconvey the property to Mr. Murray and he did so and enclosed the deed in this letter to me after it was recorded.

Q. And during all the time that the record title stood in the name of Alec Murray, you have known of his estate in that property.

A. Yes, sir.

Q. Did he ever own the equitable title to it?

A. He never did at any time.

Q. Did you know of him holding himself out to anyone in Pocatello or elsewhere as being the equitable owner of that property?

A. I never knew of him doing so. He never stated so to me, but as to what he stated to anybody

else, I don't know. In fact he wrote to me recently and said he did not, that he never had made such representations.

CROSS-EXAMINATION by
MR. STEVENS:

Q. You have been practicing law some sixteen years, Mr. Murray?

A. Since 1901.

Q. And drew the deed from the Monidah Trust Company to Alec Murray?

A. Well, I am not sure, but I think I did.

Q. You also drew the answer to the petition filed in this action?

A. Yes.

Q. And in that answer you state that this property stood in the name of James A. Murray and was by him conveyed?

A. Yes, that was an oversight on my part. I had forgotten about the Monidah Trust Company.

Q. In fact, your further investigation shows you it never stood in Mr. Murray's name?

A. Yes.

Q. And the Monidah Trust Company is a Delaware corporation?

A. Yes, but I am sometimes confused, as the Monidah Trust Company is really James A. Murray, and we speak of the property as belonging to Mr. Murray, as he has complete control of it.

Q. Were you present at the time a trust was created between Alec Murray and James A. Murray?

A. I was present.

Q. Can you give the conversation?

A. Nothing more than that Mr. Murray said he would convey the property to him and it should stand in his name, but at any time he wanted the property reconveyed, he would expect him to do so.

Q. You knew, then, of your own knowledge, that this property stood in the name of Mr. Murray for several years, until March, 1917?

A. Yes.

Q. And you knew that Alec deeded one-half interest in this property to Mr. Winter?

A. Yes, sir, at Mr. Murray's request, he did.

Q. You state he never claimed an equitable title to this property.

A. He told me so.

Q. You are not in a position to say he never did make such representations?

A. Of course not.

Q. You never placed on record a trust deed or agreement between these parties?

A. No, sir.

Q. And if there was an agreement it was merely oral?

A. Yes, sir.

MR. STEVENS: In connection with the testimony of James A. Murray, I desire to call the Court's attention to the suit of the City of Pocatello vs. James A. Murray, and especially that part of the opinion of the Court found upon page 453 touching the affidavits of Alec Murray and James A. Murray, and at the bottom of page 464, relative to the ownership of the Auditorium Theatre in Pocatello.

CARL VALENTINE—Recalled.

RE-CROSS-EXAMINATION by
MR. JAMES E. MURRAY:

The transactions I had with Alec Murray cover a period of time a little less than two years. I would say about a year and nine or ten months. We had conversations with him at different times. Alec was in a habit of coming in and asking for loans and then would come in and take up part of them and sometimes all of the loans, and at the different times we were discussing affairs as a banker will with his clients. It was at the last time the question came up but I had been discussing the matter with Alec, and also the water plant. Do you recall the time I met you and he at the time the City purchased the water plant, well, just at that time he told me when the transfer was completed he would get \$40,000.00 when the bonds were taken care of, according to the arrangement with his uncle. At the last time when this note was increased, when he became the purchaser of this stock over here, at that time he said, if you want me to I will give you a mortgage on this property, but really it is only \$2700.00 or \$2800.00 and something, and such a small amount to place a mortgage on the property under the circumstances, as it will be running for only such a short time.

Q. Then you believed him when he told you he expected to get \$40,000.00 from the water works plant?

A. Yes. He had charge of the plant. The plant was in his name, was it not?

Q. Yes, subject to the bonds.

A. Here is the way he put it up to me, Mr. Murray: A portion of this obligation is with the old Chronicle. That loan was made by Mr. Standrod and Ireland previous to our purchasing the First National Bank, and is included in this note. And I asked them at the time we purchased about that Chronicle note, and they said Mr. James A. Murray owns the Chronicle, and just a small amount is loaned to take care of this Chronicle business. I don't know just how much the Chronicle debt was. They made some payments on it—Phillips and Alec. They were both on the note. Alec asked us to release Phillips, that the Chronicle belonged to his uncle and he wanted to release Phillips, who was leaving. Then he came to us and said he was making some repairs to the Auditorium and there is also a portion of that debt in the note. I wouldn't say whether that was before the Chronicle note was changed or not. I think that is a little over two years ago. It wasn't very many months after we had purchased the First National Bank. I have no records here to show what portion of our claim constitutes the Chronicle debt. At the time of the last renewal, when we discussed the title of this property we extended an additional credit of \$1,000.00.

Q. Previous to that time you were not extending him any credit on account of the ownership of the Auditorium building?

A. Sure we were. We had discussed it at different times, and we put it right up to him when he

asked for this increase. He said the increase was only for a short time and we asked what security he could offer us, and he told us he could give this security on the building, but didn't like to do it for so short a time. I said, why do you want to buy this stock? He said, "I have a letter from my uncle that he will let me have \$75,000.00 or \$100,000.00, which I will loan out on building loans in the city, and I am going east in a little while and I want to get control of this Loan Association."

Q. In extending him credit, you depended upon all his statements and extended him credit on the strength of all his statements?

A. Yes, we extended him credit on the strength of the property holdings which he claimed and in addition, what he expected to get from Mr. Murray. We had to listen to his statements. We figured if he owned all that property without a mortgage on it, he was entitled to this credit. We would not have given him this credit, but we knew the records showed he had this property.

MR. JAMES E. MURRAY: The defendant objects to all of the testimony of Carl Valentine, relating to the transactions between Alec Murray, Bankrupt, and the First National Bank; particularly with reference to the loans made by said bank to Alec Murray, upon the ground and for the reason that all of said testimony is incompetent, irrelevant, and immaterial and is not within the issues in this suit and doesn't prove or tend to prove any of the issues herein. Further, for the reason that this testimony fails

to show that the loan of this bank, made the basis of this claim against the bankrupt's estate, was made in reliance upon the title of this property standing on the records in the name of Alec Murray.

Witness excused.

MISS I. N. ANTHERS—Recalled.

RE-CROSS-EXAMINATION by

MR. JAMES E. MURRAY:

Q. Miss Anthes, when did you first commence having dealings with Alec Murray with reference to loans?

A. Several years ago, at the time he bought the first car I loaned him money. I think probably about four years. I don't remember the amount of the original loan.

I never discussed with him at any time whether he was the owner of the Auditorium property, but I had it looked up by my attorney. I don't remember just when it was. When he began to increase it and I thought it was getting too big. We didn't ask for any security at any time, and never took any security. I don't know anything about the White transaction.

Q. You never asked him for any security; never asked him to give the Auditorium property as security?

A. No, sir.

MR. JAMES E. MURRAY: The defendant objects to all of the testimony of I. N. Anthes, relating to the transactions between Alec Murray, Bankrupt, and the Citizen's Bank, particularly with reference

to the loans made by said bank to Alec Murray, upon the ground and for the reason that all of said testimony is incompetent, irrelevant, and immaterial and is not within the issues in this suit and doesn't prove or tend to prove any of the issues herein. Further, for the reason that this testimony fails to show that the loan of this bank, made the basis of its claim against the Bankrupt's estate, was made in reliance upon the title of this property standing on the records in the name of Alec Murray.

The defendant objects to the testimony of I. N. Anthes, with reference to the matter of having Mr. E. C. White look up the title to the Auditorium property and with reference to the witness making loans to the said Alec Murray, based upon his title to said property, for the reason that said testimony is hearsay.

Defendant further objects to the testimony of Miss Anthes, with reference to the extension of credit to the said Alec Murray, for the reason that it appears from her testimony that said credit was not extended in reliance upon the title to said property standing in the name of Alec Murray.

Witness excused.

JAMES A. MURRAY—Recalled.

RE-DIRECT EXAMINATION by

MR. JAMES E. MURRAY:

Q. In the Bankrupt's schedule here of debts there is included an alleged credit of yours for \$25,000.00. Do you make any claim against the bankrupt?

A. I do not—he isn't worth anything.

Q. At the time of the sale of the water works

property, did you tell him if he transferred the property to the City you would not hold him for any obligation on his note which he had executed for the property?

A. I didn't tell him in those words. I told him I was selling the bonds and if he couldn't do anything we would call everything square.

Q. Also an item of about \$12,000.00 back interest on bonds.

A. Nothing on that either.

Q. At this time you do not claim any debt against Alec Murray?

A. I am satisfied he owes me money, but I don't claim anything. It's no use.

Q. I mean on these two items?

A. Oh, no.

RECROSS-EXAMINATION by
MR. J. M. STEVENS:

Q. You said you didn't claim anything because he couldn't pay it if you did?

A. Yes, sir.

MR. JAMES E. MURRAY:

Q. Did you mean that on these two items, Mr. Murray?

A. No, they are wiped out by themselves.

Witness excused.

MR. MURRAY: At this time, pursuant to the ruling of the Court, we desire to interpose on behalf of defendant, the following objections to the testimony submitted on the part of the plaintiff:

The defendant objects to all of the testimony of D. W. Church, relating to the transactions between Alec

Murray, Bankrupt, and the Bannock National Bank, particularly with reference to the loans made by said bank to Alec Murray, upon the ground and for the reason that all of said testimony is incompetent, irrelevant, and immaterial and is not within the issues in this suit and doesn't prove or tend to prove any of the issues herein. Further, for the reason that this testimony fails to show that the loan of this bank made the basis of its claim against the Bankrupt's estate, was made in reliance upon the title of this property standing on the records in the name of Alec Murray.

The defendant objects to the introduction of evidence in this case of the deeds and records pertaining to the title to the Auditorium property and objects to all testimony of Carl Valentine with reference to the examination of the record and title and his reliance upon the record showing title to the Auditorium property standing in the name of Alec Murray. Also the testimony of D. W. Church with reference to the title standing in the name of Alec Murray and with reference to his examination of the records and reliance upon the records showing title standing in Alec Murray. Also to testimony of I. N. Anthes with reference to reliance upon the records showing title to the Auditorium property standing in the name of Alec Murray. Upon the ground and for the reason that said testimony is not within the issues in this case; and for the reason that in the complaint or petition filed herein, it is expressly alleged that in extending the credit mentioned and re-

ferred to in the said petition or complaint, to Alec Murray, reliance was had only upon the representations of the said Alec Murray.

EXPLANATION BY MR. JAMES E. MURRAY:

I desire to have the record show the reason I was not here for the trial of this action at the time it commenced before the Federal Court.

I received notice from Mr. Coffin that the case would come on for trial October 8, 1917, and shortly before that I was required to go to the coast, to Seattle, on business, and while in Seattle, I wired to Mr. Coffin to find out when the case would be reached for trial, in order to prepare to come on for the hearing.

On October 6th, I received a telegram from Mr. Coffin, stating that the case would be the last case on the term and I immediately wired back to ask him what would be the exact date, and in answer received a wire on October 6th, saying some time between the 15th and 20th, "cannot be more definite."

I received that message on the 6th and concluded there would be no hurry and that I would have plenty of time to get to Pocatello by the 15th. I had no more word from the case until my return to Butte, on last Saturday night, October 13th, when I found a telegram there awaiting me, stating that the case was to come up for the 12th, and also found a letter from Mr. Coffin explaining the circumstances and stating that the Court proceeded with the case, with the understanding that I would be permitted to put in testimony of the defendant before a referee.

This explains my failure to be present on the 12th of October, when the case came on for trial.

(Title of Court and Cause.)

It is hereby stipulated by and between the parties hereto that the foregoing statement of evidence is a full, true and correct transcript of and constitutes all of the evidence and proofs of the respective parties herein.

It is further stipulated and agreed that the petition in bankruptcy, the order of reference, and order adjudicating Alec Murray a bankrupt, introduced by complainant, are omitted by consent, said papers being introduced only for the purpose of showing the adjudication in bankruptcy, the appointment of complainant as trustee and the date of the filing of the petition in bankruptcy, to-wit: May 14, 1917, all of which said facts are hereby admitted.

It is further stipulated and agreed that the deeds showing the transfers between the bankrupt Alec Murray and the defendant herein need not be set forth in full, it being hereby agreed that said deeds are in the usual form, properly acknowledged and recorded and show the transfers involving the property in question and the dates thereof as stated in the testimony of Harry J. Fox, Recorder of Bannock County, Idaho.

It is further stipulated and agreed that the testimony of defendant's witnesses may be incorporated in question and answer form as set forth in the foregoing statement of evidence.

It is further stipulated and agreed that the foregoing statement of evidence may be approved, settled and allowed and filed herein as the statement of

evidence on appeal without further notice of time or place of approval.

J. M. STEVENS

Solicitor for Complainant.

JAMES E. MURRAY,

Solicitor for Defendant.

The foregoing statement of evidence and proceedings in the above entitled cause is in due time presented to the undersigned Judge of this Court and is hereby approved as true, correct and complete and properly prepared and the parties having stipulated that the testimony of defendant's witnesses might be incorporated in question and answer form, the court does hereby approve the same as proper and necessary for the presentation of this cause on appeal and said statement of evidence is hereby approved as true, correct and complete and is ordered filed herein.

Dated this 31st day of January, A. D. 1918.

FRANK S. DIETRICH,

Judge of the U. S. District Court, District of Idaho.

Endorsed: Filed Jan. 31, 1918.

W. D. McReynolds, Clerk.

(Title of Court and Cause.)

No. 205.

PETITION FOR APPEAL AND ALLOWANCE.

To the Honorable Frank S. Dietrich, District Judge of the United States for the District of Idaho, Eastern Division.

The above named defendant, James A. Murray, feeling himself aggrieved by the decree made and en-

tered in this cause on the 5th day of January, A. D. 1918, does hereby appeal from said decree to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors, which is filed herewith, and defendant prays that an appeal be allowed and that a citation issue as provided by law, and that a transcript of the record and proceedings herein duly authenticated be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

Your petitioner further prays that the proper order touching the security to be required of him to perfect his appeal be made, and desiring to supersede the execution of the decree herein your petitioner here tenders bond in such amount as the court may require for such purpose and prays that with the allowance of the appeal a supersedeas be had.

Dated this 31st day of January, A. D. 1918.

JAMES E. MURRAY,
Solicitor for Defendant.

The foregoing petition for appeal is hereby granted and the appeal is allowed in the above entitled cause and it is ordered that said appeal shall operate as a supersedeas upon the appellant filing a bond in the sum of \$5000.00 with sufficient surety or sureties to be conditioned as required by law.

FRANK S. DIETRICH,
Judge of the District Court of the United States for
the District of Idaho.

(Service acknowledged.)

Endorsed: Filed Jan. 31, 1918.

W. D. McReynolds, Clerk.

(Title of Court and Cause.)

No. 205.

ASSIGNMENT OF ERRORS.

Comes now the defendant James A. Murray, and files the following assignment of errors, in support of his appeal from the decision and decree made and entered herein by this Honorable Court on the 5th day of January, A. D. 1918, and respectfully shows that said decision and decree is erroneous and unjust to defendant, for the following reasons, to-wit:

I.

That the court erred in finding and deciding that the conveyance of the property involved in this suit by the defendant James A. Murray to the bankrupt Alec Murray, was an absolute conveyance in fee simple without any restrictions, conditions or qualifications and that no trust was ever made or created, obligating the bankrupt to reconvey said property to the defendant.

II.

The Court erred in finding and deciding that the conveyance from the bankrupt, Alec Murray, to the defendant, James A. Murray, was voluntary and in law a mere gift.

III.

That the Court erred in finding, deciding and decreeing that the conveyance of the property involved in this suit by the defendant James A. Murray through the Monidah Trust, a corporation, controlled by defendant, was an absolute conveyance of

the title to the property involved in this suit in fee simple and that there was no trust agreement or obligation made or created by the parties obligating the said bankrupt Alec Murray, to reconvey said property to the defendant herein.

IV.

That the court erred in finding and deciding that no competent or sufficient proof was offered or introduced in evidence to establish a trust or other agreement or obligation on the part of the bankrupt to reconvey the property involved in this suit to the defendant, James A. Murray.

V.

That the court erred in not finding, deciding and decreeing that the defendant herein, James A. Murray, was the owner of the equitable estate or title in the property involved in this suit.

VI.

The Court erred in not finding, deciding and decreeing that the legal title to the property involved in this suit was conveyed to and held by the bankrupt, Alec Murray, in trust for the defendant herein.

VII.

That the court erred in not finding, deciding and decreeing that the defendant James A. Murray, was entitled to a reconveyance of the property involved in this suit and that the reconveyance of said property by the bankrupt was made in compliance with and in performance of said trust and is valid as against the creditors of the bankrupt.

VIII.

That the court erred in ordering and entering a decree herein in favor of the plaintiff and against the defendant for the reason that the testimony conclusively establishes the fact that the property involved in this suit was held in trust by the bankrupt, Alec Murray, for the benefit of the defendant herein and that defendant was entitled to a reconveyance of the same.

IX.

That the court erred in ordering and entering the decree herein in favor of the defendant and against the defendant for the reason that the relief granted by said decree was not warranted by the pleadings and was not within the issues framed by the pleadings.

X.

The court erred in not finding and rendering its decision herein in favor of the defendant and against the plaintiff and in failing to decree the defendant herein to be the equitable owner of the property involved in this suit for the reason that the uncontradicted testimony establishes the fact that the defendant was at all times the owner of the equitable title or estate in said property and that he caused the legal title to be conveyed to the bankrupt Alec Murray, without any consideration and upon the express agreement and understanding that the said bankrupt was to hold the legal title to said property in trust for defendant herein.

WHEREFORE, defendant prays that the said decree be reversed and the District Court directed to enter its decree herein in favor of the defendant and against the plaintiff.

JAMES A. MURRAY,
Solicitor for Defendant.

(Service Acknowledged.)

Endorsed: Filed Jan. 31, 1918.

W. D. McReynolds, Clerk.

(Title of Court and Cause.)

No. 205.

BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS:
That we James A. Murray, as principal, and I. N. Anthes and George A. Greene, as sureties, acknowledge ourselves to be jointly indebted to H. E. Ray, as Trustee in bankruptcy, appellee in the above entitled cause, in the sum of \$5000.00, conditioned that,

WHEREAS, on the 5th day of January, A. D. 1918, in the District Court of the United States for the District of Idaho, in a suit depending in that court wherein H. E. Ray as trustee of the estate of Alec Murray, bankrupt, was plaintiff and James A. Murray was defendant, numbered on the equity docket as 205, a decree was rendered against the said James A. Murray, and the said James A. Murray, having obtained an appeal to the Circuit Court of Appeals, Ninth Circuit, and files a copy thereof in the office of the Clerk of the Court to reverse the said decree, and a citation directed to the said H. E. Ray

as trustee of the estate of Alec Murray, bankrupt, citing and admonishing him to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden in the City of San Francisco, in the State of California, on the 2nd day of March, A. D. 1918, next.

NOW, if the said James A. Murray shall prosecute his appeal to effect and answer all damages and costs, if he fail to make his plea good, then the above obligation to be void, else to be and remain in full force and virtue.

JAMES A. MURRAY.
I. N. ANTHERS.
GEO. A. GREENE.

State of Idaho,
County of Bannock.—ss.

I. N. Anthes and Geo. A. Greene, being first severally duly sworn, each for himself, deposes and says: That he is the surety named in the above and foregoing bond and that he is worth the sum specified in said bond, exclusive of property exempt from execution or forced sale.

I. N. ANTHERS,
GEO. A. GREENE.

Subscribed and sworn to before me this 28th day of January, A. D. 1918.

FINIS BENTLEY,
Notary Public in and for the State of Idaho, residing
(Seal.) at Pocatello.

My commission expires Dec. 27, 1920.

(Service acknowledged.)

The foregoing bond on appeal is hereby approved this 31st day of January, A. D. 1918.

FRANK S. DIETRICH,
Judge of the District Court of the United States for
the District of Idaho.

Endorsed: Filed Jan. 31, 1918.

W. D. McReynolds, Clerk.

(Title of Court and Cause.)

No. 205.

PRAECIPE.

To W. D. McReynolds, Clerk of the United States District Court, District of Idaho.

You will please prepare a transcript on appeal herein including therein the following papers, to-wit:

Final record herein including the bill of complaint, subpoena in equity, answer of defendant, final decree and certificate of the clerk. Also including in said transcript on appeal, statement of evidence and stipulation of parties with reference thereto; and order of the court approving and settling the same; the petition for appeal and order allowing the same; assignment of errors and acknowledgement of service thereof; bond on appeal and order approving the same, citation of appeal and acknowledgement of service thereon; the opinion of the court herein and also this praecipe and certificate of the clerk.

Dated this 28th day of January, A. D. 1918.

JAMES E. MURRAY,
Solicitor for Defendant.

Due service of the foregoing Praecipe admitted this 28th day of January, A. D. 1918, and the right to file a Praecipe herein indicating additional portions of the record to be included in said transcript is hereby waived and consent is given that the said transcript may be immediately prepared, containing the portion of said record indicated in the above and foregoing Praecipe.

J. M. STEVENS,
Solicitor for Plaintiff.

Endorsed: Filed Jan. 31, 1918.

W. D. McReynolds, Clerk.

*In the District Court of the United States for the
District of Idaho, Eastern Division.*

H. E. RAY, as Trustee of the Estate of ALEC
MURRAY, Bankrupt, Plaintiff,

vs.

JAMES A. MURRAY, Defendant.

205

CITATION OF APPEAL.

THE PRESIDENT OF THE UNITED STATES to H. E. Ray, as Trustee of the Estate of Alec Murray, bankrupt, and to John Stevens, Esq., his solicitor:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit at the City of San Francisco, State of California, within Thirty (30) days from the date hereof pursuant to an appeal filed in the office of the Clerk of the District Court of the United States for the District of Idaho, where-

in James A. Murray is the appellant and H. E. Ray as Trustee of the estate of Alec Murray, bankrupt, is the appellee, to show cause if any there be, why the said decree in the said appeal mentioned should not be corrected and why speedy justice should not be done to the parties on that behalf.

WITNESS, the Hon. Frank S. Dietrich, Judge of the United States District Court for the District of Idaho this 31st day of January, A. D. 1918, and of the Independence of the United States the one hundred and forty-second.

FRANK S. DIETRICH,
Judge of the District Court of the United States for
the District of Idaho.

Service of the foregoing Citation of Appeal acknowledged and copy thereof received this 31st day of January, A. D. 1918, and further notice or citation is waived.

J. M. STEVENS,
Solicitor for Plaintiff and Appellee.
Filed Jan. 31, 1918.

W. D. McReynolds, Clerk.

RETURN TO RECORD.

And thereupon it is ordered by the court that the foregoing transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating, be transmitted to the United States Circuit Court of Appeals for the Ninth Circuit, and the same is transmitted accordingly.

Attest: W. D. McREYNOLDS,
(Seal.) Clerk.

CLERK'S CERTIFICATE.

United States of America,
District of Idaho.—ss.

I, W. D. McReynolds, Clerk of the United States District Court for the District of Idaho, do hereby certify that the above and foregoing transcript pages 1 to 85, inclusive, is a full, true, correct and complete transcript of the record and all proceedings had in the above entitled cause, including the bill of complaint, subpoena in equity, answer of defendant, final decree and certificate of final record; also the statement of evidence and stipulation of parties with reference thereto and order of court approving and settling the same; petition for appeal and order allowing the same, assignment of errors and acknowledgement of service thereon; citation on appeal and acknowledgement of service thereon; bond on appeal and order approving the same, also including the opinion of the court and all proceedings had in said cause, as fully as the same remains on file and of record in my office.

I further certify that the cost of the record herein amounts to the sum of \$121.50, and that same has been paid by appellant.

WITNESS my hand officially and the seal of said court at Boise, in the District of Idaho, this 18th day of February in the year of our Lord, Nineteen Hundred and Eighteen and of the Independence of the United States the One hundred and forty-second.

W. D. McREYNOLDS,
Clerk of the District Court of the United States for
the District of Idaho.

(Seal.)

